City of Richmond had no lien for past due taxes upon these goods and chattels when the Chancery Court receiver took possession, we think must be regarded as settled by *Jackson Coal Co.* v. *Phillips Line*, 114 Virginia, 40 (1912), and this notwithstanding differences between its charter and that of Petersburg. The Supreme Court of Virginia there said (pp. 49, 50):

"With respect to that part of the decree appealed from, which directed the payment of taxes due from the Phillips Line, and its predecessor in title, to the State of Virginia and the city of Petersburg, out of the fund under the control of the court, and giving the taxes priority of payment over the creditors of the receivers, the court erred, except as to the taxes for the year 1910. The property upon which these taxes were assessed was wholly personal, and no effort appears to have been made, certainly as to the years prior to 1910, either by the Auditor of the State or by the city of Petersburg, to collect the taxes until the property was placed in the hands of the receivers in this cause and an account of debts against the Phillips Line ordered. The State had a right under sections 604–623 of the Code, for one year from the date on which the taxes in her favor were assessed, to levy upon the property assessed with the taxes, which right was not exercised; and it appears that the city of Petersburg had a right of distress against the property assessed with taxes in its favor, which the city might have exercised before the taxes were returned delinquent, or the property upon which they were assessed had passed into the hands of subsequent purchasers, and thereby secured a lien therefor, but these rights were never exercised.

"Under these circumstances, neither the State nor the city had a lien upon the property of the Phillips Line when it went into the hands of the receivers for the taxes due them, respectively, and, therefore, the position of the State and city was no better than that of the general

creditors of the company, and they were not entitled to share in the proceeds of sale of the company's property, except as to the amount of taxes due them (the State and the city), respectively, for the year 1910, assessed against and due from the receivers."

Respondents therefore must prevail unless priority over their lien is given by § 64a to claim for taxes which, under state law, occupied no better position than one held by a general creditor. Section 67d, Bankruptcy Act, quoted *supra*, declares that liens given or accepted in good faith and not in contemplation of or in fraud upon this act, shall not be affected by it. Other provisions must, of course, be construed in view of this positive one. Section 64a directs that taxes be paid in advance of dividends to creditors; and "dividend" as commonly used throughout the act means partial payment to general creditors. In § 65b, for example, the word occurs in contrast to payment of debts which have priority. And as the local laws gave no superior right to the city's unsecured claim for taxes we are unable to conclude that Congress intended by § 64a to place it ahead of valid lien holders.

New Jersey v. *Anderson*, 203 U. S. 483, is not decisive of any point here contested; it only adjudged that New Jersey's claim was for a tax within the meaning of § 64a and entitled to be treated accordingly. See *New Jersey* v. *Lovell*, 179 Fed. Rep. 321.

The judgment below must be

Affirmed.

MR. JUSTICE DAY and MR. JUSTICE CLARKE dissent.